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Seventh session

SUMMARY RECORD OF THE 89th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Additional report of Ecuador (CAT/C/7/Add.11 and 13; CAT/C/7/Add.7)

1. At the invitation of the Chairman, Mr. Medina López, Mr. Santos and Mr. Apunte Franco (Ecuador) took places at the Committee table.

2. Mr. MEDINA LOPEZ (Ecuador) said that, without prejudice to any discussion which might take place on the written information submitted by Ecuador, particularly in document CAT/C/7/Add.13, he would focus on certain events that had taken place in his country in the past few months.

3. One unfortunate event which had had a profound effect on the public conscience both in Ecuador and internationally had been the disappearance on 8 January 1988 of the Restrepo Arizmende brothers, aged 17 and 14, respectively, who were the sons of a Colombian couple who had lived in Ecuador for many years.

4. As a result of the parents' perseverance and the expression of public concern in Ecuador, Colombia and other countries, his Government had, in accordance with a decree of 13 July 1990, agreed to the establishment of an international commission with broad investigatory powers. The Commission had been composed of Dr. Bandonge, an expert appointed by the United Nations Secretary-General; Dr. Díaz Callejas, former governor of the department of Sucre, former Deputy Minister of Agriculture and Senator of Colombia and founder of the Colombian Human Rights Committee; Dr. de Dios Parra, Secretary-General of the Latin American Association for Human Rights (ALDHU); Dr. Robelino, representative of the Ecuadorian Episcopal Conference; Dr. Arizmende Díaz, uncle of the missing brothers; and himself in his capacity as Attorney-General of Ecuador.

5. The President of Ecuador had provided the Commission with all the political, financial, logistic and operational support it had needed to carry out its work. For a period of almost 14 months, the Commission had considered three main possibilities: that the brothers had voluntarily left their home; that they had been victims of a road accident; and that they had been victims of a crime.

6. On 2 September 1991, the Commission had submitted a report to the President of Ecuador concluding that the first two possibilities were to be ruled out; that the brothers had disappeared when they had been in the hands of members of the National Police; that there had been negligence in police investigations and deliberate attempts by members of the police to cover up offences related to the case; and that, notwithstanding the fact that the bodies had not yet been found, the brothers were not alive. It had been recommended in the Commission's report that: (i) all necessary steps should be taken to institute legal proceedings against persons suspected of having committed offences in connection with the case; (ii) the necessary measures should be adopted to prevent similar cases from occurring in future; (iii) the family should receive compensation in accordance with the law; (iv) all

measures should be adopted to guarantee the investigation of other cases of disappearance and torture; and (v) the Ecuadorian authorities should continue to cooperate fully with the competent United Nations human rights bodies.

7. The report had also shown that, in the Criminal Investigation Service (SIC), torture, arbitrary arrests and the use of cruel, inhuman and degrading treatment had been routine practices. The abuse of power and the use of illegal or immoral methods were in no way part of the policy of the current Government, which aspired to the full respect for the rights and guarantees of the population of the country. In the lower ranks of the National Police, however, there had been incidents which had led the President to adopt a number of basic measures on 2 September 1991.

8. SIC had been abolished as a result of findings of irregularities in its activities and measures had been taken to bring the Judicial Police into operation. Provision had originally been made for the establishment of the Judicial Police in 1974, but the relevant measures had been adopted only recently. The decision to establish the Judicial Police was of great political significance, but it also meant that the necessary financial resources for its operation had to be made available. Under decree No. 2693, US$ 6 million and Sucres 100 million had therefore been earmarked for the equipment, recruitment and training of the Judicial Police. Over 500 persons had applied to become members of that body and recruitment and training were under way with French assistance and expertise.

9. On 2 September 1991, the President had adopted another important decision to guarantee respect for human rights at the national level. Under decree No. 2694, the mandate of the above-mentioned International Commission had been broadened so that it could hear complaints and receive information concerning human rights cases. To date, it had received 31 complaints, 3 of which related to accusations of torture. The Government had also established the Office of the Under-Secretary for Justice, which was part of the Ministry of the Interior and whose task was to ensure that complaints of abuses of human rights and constitutional guarantees were taken into account. The channels through which persons whose human rights had been violated might take action thus included the relevant judicial bodies; the Court of Constitutional Guarantees; and the Ministry of the Interior and the Office of the Under-Secretary for Justice. Such persons could also apply to the International Commission. In addition, non-governmental organizations, including the Ecuadorian Society for Human Rights, the Ecumenical Commission for Human Rights and the Latin American Association for Human Rights (ALDHU) had an important role to play in ensuring that cases of human rights violations were brought to the attention of the police.

10. Other relevant measures included agreements with national universities so that students could gain practical experience by working with law enforcement officials. Agreements had also been reached with non-governmental organizations, including the Ecuadorian Red Cross and ALDHU, so that groups of experts could monitor the procedures followed in criminal investigation centres with a view to safeguarding the physical and mental condition of persons under investigation. The Government of Ecuador had strengthened the administrative structure of the Ministry of Foreign Affairs so that it could organize workshops and seminars to ensure respect for human rights. Steps

were also being taken to implement provisions to ensure that individuals had access to an ombudsman paid by the State. That service was in addition to the already existing provision of court appointed legal counsel. Another legal reform that was under way involved the replacement of investigatory commissioners from the Ministry of the Interior by justices of the peace.

11. Mr. GIL LAVEDRA (Country Rapporteur) welcomed the oral introduction and the three written reports by Ecuador, which contained an impressive amount of information, and noted with satisfaction that the Government of Ecuador was endeavouring to implement international instruments aimed at universalizing human rights, particularly in respect of the prevention and elimination of torture. It was commendable that Ecuador had already adopted a large number of relevant international and regional agreements and had agreed to monitoring by the relevant human rights treaty bodies.

12. With regard to the relationship between international instruments and domestic legislation, it was clear from article 137 of the Constitution that international treaties were subordinate to the Constitution, whereas paragraph 34 of document CAT/C/7/Add.13 stated that international conventions could be invoked in the same way as a law. In the light of article 44 of the Constitution, it would seem that international conventions did not have priority over domestic legislation. Moreover, if international standards and domestic legislation were considered to be on the same footing, that would imply that the most recent legal instruments would take precedence and that all the international commitments made by Ecuador in the past might subsequently be found to be without effect as the result of the introduction of new legislation. He wished to know whether the Supreme Court considered that the provisions of international treaties were directly applicable to Ecuadorian domestic law.

13. There were many points regarding the reorganization of the courts that he found obscure, and there seemed to be no text establishing the independence of the judiciary, as he had already pointed out at the Committee's fifth session in 1990.

14. The rule embodied in article 19, paragraph 17 (h), of the Constitution that no one could be held for more than 24 hours without a judicial order or held incommunicado for more than 24 hours seemed to conflict with article 54, paragraph 6, and article 130 of the Code of Penal Procedure. Moreover, he wished to know how the right of a person held incommunicado to communicate with his lawyer, as set out in article 130, paragraph 2, of the Code of Penal Procedure, was applied in practice.

15. The differences in the competence of the various bodies in charge of investigations were difficult to understand. Referring to article 6 of the Code of Penal Procedure and to articles 117 et seq. of the Constitution, he said that it was hard to see how municipal officers could be given such legal functions as reporting to a criminal judge. It appeared that the provision concerning the judicial police in title III of the Code of Penal Procedure had never been applied. He therefore wondered who was in charge of investigations.

16. It had been stated that the Criminal Investigations Service (SIC) was part of the National Police, but he could not find the relevant provision in

the texts made available to the Committee. The intention to reduce the number of investigatory bodies was, however, to be commended.

17. Part II.J. of document CAT/C/7/Add.11 relating to article 2, paragraph 11, of the Convention stated that prisoners were given a medical examination in order to establish their physical and mental condition. He asked what the legal basis was for that excellent provision.

18. Turning to protection against torture, he said that the reports by Ecuador referred to the dual protection offered by habeas corpus and amparo, as provided for in the Code of Penal Procedure. How did habeas corpus work, since municipal authorities seemed to be entrusted with legal functions? Did habeas corpus apply to detention ordered by a judge and, if so, could a municipal employee enforce a measure against an illegal order by a judge? Had legal practice established any distinction between amparo and habeas corpus?

19. With regard to the operation of the Court of Constitutional Guarantees, the Committee had asked many questions about the meaning of "observance" of the authority of the court. The Ecuadorian representatives had clarified that point. However, the Constitution stated that contempt of the authority of the Court was particularly punishable. Did that mean that a disobedient official could be criminally punished and, if so, for what offence, since the Penal Code stated that the offence of contempt of court did not apply in such cases?

20. Under article 131 of the Constitution, members of the police had to be tried by special courts. If that was true in the case of offences of torture, that might explain why so little progress had been made in many of the cases under investigation.

21. Referring to compliance with specific provisions of the Convention, he asked whether, in connection with the definition of torture contained in article 1, the provisions of articles 204, 205 and 187 of the Penal Code also applied to psychological or moral torture. Paragraph 20 of document CAT/C/7/Add.13 stated that the Penal Code "does not just refer to physical torture, despite the fact that when it was drafted, moral or psychological torture was not a well-known issue. It leaves open the possibility of other types of torture into which the latter fits". However, article 4 of the Penal Code wisely prohibited a broad interpretation of penal law provisions. The provisions described in the Ecuadorian reports did not seem to cover all the situations referred to in article 1 of the Convention.

22. Paragraph 26 of document CAT/C/7/Add.13 stated that: "... although Ecuadorian legislation contains no explicit definition of what is meant by torture, torture is prohibited under the Constitution and the categorization of the various offences of torture affords ample scope for the provisions of the Convention against Torture ...". However, article 19 of the Constitution and article 12 of the Penal Code explicitly stipulated that the Convention could not be applied directly, since the Convention did not establish offences. That was done by domestic law. He stressed that legality was a cardinal principle of all international and regional human rights instruments.

23. As to compliance with article 2, paragraph 3, of the Convention, there seemed to be a striking discrepancy between articles 214 and 250 of the Penal

Code. Under article 250, a subordinate who committed an illegal act was exempt from criminal liability when an order given him was manifestly unconstitutional. Under article 214, a subordinate who committed an illegal act was exempt from criminal liability if the illegal act could not be carried out without a breach of discipline. Article 214 as drafted seemed to be incompatible with the Convention.

24. On page 16 of document CAT/C/7/Add.13, it was stated that the Supreme Court had issued an opinion in favour of amending article 214 to do away with the exemption of criminal liability of a subordinate who had committed an illegal act on the orders of a superior and that that reform would have to be decided by the National Congress. If the Convention was now part of Ecuadorian domestic law, why did the reform have to be decided by the Congress?

25. He did not believe that the provision contained in article 3 of the Convention was covered by article 4 of the Ecuadorian Regulations on Aliens because, if the Convention was part of Ecuadorian domestic law, it could be enforced directly. The same point applied to article 5 of the Convention. Articles 3 and 5 of the Penal Code might be the key to the direct application of the Convention. He asked for confirmation in that respect.

26. Document CAT/C/7/Add.11 contained detailed answers to the questions on staff training which had been put by the members of the Committee.

27. In connection with compliance with article 15 of the Convention, it was stated on page 26 of document CAT/C/7/Add.13 that any statement made in violation of the principles of articles 127 and 128 of the Code of Penal Procedure was void and without probative force. He wished to know on what legal provision that statement was based.

28. He believed that the Ad Hoc Human Rights Committee set up by the National Congress and referred to in paragraph 43 of document CAT/C/7/Add.13 was not the same as the Commission set up in July 1990 to consider the case of the Restrepo brothers. Would the Ad Hoc Human Rights Committee not have been competent to consider that case?

29. At the Committee's fifth session in November 1990, the Ecuadorian representatives had been asked about the resignation of certain prison officials in January 1990 and what measures the Government had taken following those resignations and the allegations by non-governmental organizations of systematic torture by SIC, which had been corroborated by the Commission set up to investigate the Restrepo case. Answers to those questions would be appreciated.

30. Referring to paragraph 50 of document CAT/C/7/Add.13, which summarized replies given to the Special Rapporteur of the Commission on Human Rights concerning alleged instances of torture, he asked how the case of Silfrido Ilves Camacho, in which an appeal had been pending before a court since 27 March 1990, could be reconciled with article 350 of the Code of Penal Procedure, which stated that such an appeal had to be decided within 15 days. The same point applied to the case of Segundo Manuel Chimbay Zhinin. He also wished to know what legal action had been taken in the case of Roberto Manota Manota and requested further details on the appropriate legal action taken on the report of torture in the case of Hector Mejia and others.

31. Mr. SORENSEN (Alternate Country Rapporteur) welcomed the exhaustive additional report and the additional information (CAT/C/7/Add.7 and Add.11) which had been submitted by Ecuador and which contrasted very favourably with the initial report considered by the Committee in 1990 (CAT/C/7/Add.7). He took note of the changes in Ecuador's Constitution in the period from 1830 to 1929, when the principle of equality had been established, slavery abolished and the death penalty eliminated. The 1929 Constitution contained the first positive innovation in its assertion that the guarantees and rights enumerated in the Constitution neither limited nor excluded others inherent in the human personality. He requested clarification of the reference in paragraph 11 of document CAT/C/7/Add.13 to the Political Constitution and asked whether there were in fact two constitutions.

32. With regard to the prohibition against torture, he noted that article 187 of the Penal Code made physical torture a punishable offence, while articles 203 and 204 of the Penal Code seemed to reinforce that prohibition. In addition, paragraph 20 of document CAT/C/7/Add.13 pointed out that the Penal Code did not just refer to physical torture, although it was not clear exactly what other forms of torture might be punishable under the Code, and he asked for clarification of that point. The reference in article 204 of the Penal Code to "threat of torture" also required further explanation. The reference in article 273 of the Penal Code to the increased penalty for public officials, Government employees or police officers who violated or caused to be violated without legitimate grounds the rights of any person seemed to indicate that there might be legitimate grounds for such violations. It was, however, an overriding principle that there could be no legitimate grounds for such violations.

33. He wished to have further information on the Ad Hoc Human Rights Committee of the National Congress and, with regard to paragraph 43 (a) of document CAT/C/7/Add.13, to know what powers that Committee had to verify reports of human rights violations and whether the Committee itself did the actual footwork or whether the police was entrusted with the task. Paragraph 46 of that document mentioned the right of victims of torture to compensation and he asked whether compensation was paid directly by the State or whether the victims had to file a claim against their torturer. He pointed out that, if that was the case, they might be too frightened to press a claim, and that was why it was normal practice for the State to pay compensation itself. On page 24 of the document, reference was also made to the duty of officials, police officers and doctors to report a fact which displayed the characteristics of an offence. He asked whether that duty applied automatically or whether such instances were reported only at the discretion of the victim. As to rehabilitation, article 14 of the Convention referred to "as full rehabilitation as possible": rehabilitation was not merely financial, but also moral and medical, and he wished to know what provision was made by Ecuador for the complete rehabilitation of the victims of torture.

34. With regard to the state of national emergency, he noted that the President was empowered to suspend constitutional guarantees. He asked whether a state of emergency was a common occurrence in Ecuador and whether the President could introduce incommunicado detention under a state of emergency and, if so, for how long. He also wished to know whether persons might be detained for political reasons under a state of emergency.

35. He requested further details on the provision of article 250 of the Penal Code which exempted from punishment any official who failed to obey an order from a superior when that order was "manifestly contrary to the Constitution". He also welcomed the opinion issued by the Supreme Court of Justice in favour of amending article 214 of the Penal Code and asked what follow-up had been given by the National Congress to that opinion.

36. He asked whether the period of pre-trial detention, which was limited to 24 hours, was counted from the time of the detainee's arrest, whether the detainee was held incommunicado during that period or whether he was allowed to contact his relatives and counsel and whether the detainee was entitled to remain silent until he had seen his lawyer.

37. He was particularly impressed by the educational measures that had been introduced in Ecuador in accordance with article 10 of the Convention, although he regretted that they did not seem to apply to medical personnel, which was, in his view, a particularly important group, as it not only treated torture victims, but was also, regrettably, occasionally responsible for acts of torture.

38. Ecuador set great store by the decision taken on 2 September 1991 to abolish the Criminal Investigation Service of the National Police and he recognized that that was indeed an important step. He nevertheless wished to know what had happened to the personnel of the Service and, in particular, whether its former members had been incorporated into the Judicial Police, which had replaced it.

39. Lastly, with regard to the information provided orally by the representative of Ecuador concerning legal reform he asked how the institution of Ombudsman would operate, how the ombudsman was to be appointed and what his powers would be. He asked whether military courts still had exclusive jurisdiction over military personnel and whether members of the armed forces charged with torture could be brought before the ordinary courts.

40. Lastly, with regard to article 15 of the Convention, he noted that it was forbidden for judges and other officials to extract statements through the use of torture. He asked whether they were also obliged to disregard statements that had been obtained by others through the use of torture.

The meeting was suspended at 11.50 a.m. and resumed at 12.05 p.m.

41. Mr. PERLAS, referring to article 13 of the Convention, asked whether persons who lodged accusations with a court or submitted a complaint to the Court of Constitutional Guarantees or the special commissions of the Congress were provided with any form of protection by the Government. As to article 15, he noted that persons could not be obliged to testify against themselves in any matter in which they might incur penal responsibility, which was the basis for the prohibition against judges and other officials extracting statements through the use of torture. He asked whether torture might be used to obtain information or evidence for use against other persons than the torture victim. The information provided on article 16 of the Convention was incomplete in that it made no mention of conditions of detention, which were an important consideration in the light of the

prohibition against acts of cruel, inhuman or degrading treatment or punishment. He therefore requested further details on conditions of detention in Ecuador. He also wished to know in how many cases persons had been convicted of torture and to what penalties they had been sentenced.

42. Mr. BURNS complimented Ecuador on the measures it had taken and, in particular, on the decision to disband the Criminal Investigation Service (SIC). Like Mr. Sorensen, however, he wished to be sure that SIC had actually been broken up and that its members had not merely been dispersed to other units.

43. There was a remarkable parallel between the individual cases of torture on which Ecuador had provided information in its report and the cases to which Amnesty International had drawn attention, and he took that as confirmation of the thoroughness with which Ecuador had considered the issue. However, he could not accept the rationalization that torture was merely a consequence of junior officials overstepping their authority, a shortcoming which had to be overcome little by little, or a consequence of drug trafficking and subversion, as claimed by Ecuador in paragraph 52 of document CAT/C/7/Add.13. With regard to the latter argument in particular, he noted that virtually none of the alleged individual incidents of torture mentioned involved either drug trafficking or subversion and he was particularly disturbed by the disproportion between the crimes in question and the use of torture, which seemed to reflect a cultural ethic among the police whereby torture was an acceptable practice. Although the arguments advanced to account for torture might be acceptable excuses for failure to observe, for example, economic, social and cultural rights, protection from physical or psychological punishment and pain was such a primordial human right that no rationalization of its existence was acceptable, either from a developing or a developed country.

44. Ms. CHANET said that the written reports and the oral introduction demonstrated the existence in Ecuador of genuine political will to bring an end to the scourge of torture. In particular, the disbanding of the Criminal Investigation Service (SIC), which had had such a sinister reputation, should prove a highly effective measure, provided that the Judicial Police which was to replace it was indeed under the supervision of the courts, that the Service was effectively dismantled and that the persons who had committed abuses under it were transferred into altogether different work. She associated herself with the question Mr. Sorensen and Mr. Burns had raised in that connection, namely, how former members of the Service were currently employed.

45. With reference to paragraph 52 of document CAT/C/7/Add.13, she found it difficult to see how the prevalence of poverty and the threat posed by drug trafficking could justify carrying investigation procedures "to extremes". The use of extreme methods could never be justified and torture should be prohibited whatever the stage of development of a country and whatever the nature of the offence being investigated. In connection with paragraph 50, she would like to know the precise number of cases that were being considered by the Special Rapporteur, since the cases quoted appeared to be merely a selection of the total. She would also appreciate clarification as to the procedure governing resort to the remedy of habeas corpus (art. 128 (j) of the

Code of Penal Procedure, as referred to on p. 5 of document CAT/C/7/Add.11); she was not clear about the role of the magistrate ("le maire" in the French text) in that procedure.

46. She found it difficult to see how torture as defined in article 1 of the Convention could be fully covered by Ecuadorian legislation, in view of the fact that, as stated in paragraph 26 of document CAT/C/7/Add.13, that legislation contained no explicit definition of torture, and indeed implied that, while some categories of torture were prohibited under the law, others were not. Paragraph 20 implied that physical torture, and some forms of mental torture, were covered by the Penal Code, but did not give precise details. She pointed out that, in the context of article 4 of the Convention, acts of torture would have to be made specific offences under criminal law if they were to be punishable. She would appreciate clarification on that point.

47. In the section of document CAT/C/7/Add.13 dealing with article 2 of the Convention, she noted that the Supreme Court had recommended that article 214 of the Penal Code should be amended. She would be interested to know what steps the Government was taking to implement that recommendation. In relation to article 3 of the Convention, the report referred only to extradition and not to refoulement or explusion. Could the delegation of Ecuador clarify whether there had been any actual cases in which refoulement, expulsion or extradition had been refused on the grounds that the person concerned was in danger of being subjected to torture in his own country?

48. The section of the document relating to article 5 of the Convention was extensive, but it mainly concerned Ecuadorian citizens who had committed offences in a foreign country. It gave no details concerning offences which had been committed abroad where both perpetrator and victim were foreigners and which, under article 5, should also come within the jurisdiction of the State party. She would be grateful for clarifications concerning that point as well.

49. With regard to the section dealing with article 11 of the Convention, it would be useful to have more details on the rules governing interrogations and particularly on rules relating to access to a physician, access to a lawyer and detention in solitary confinement. It was not made clear at what point after his arrest the arrested person would be brought before the judge.

50. Section J of document CAT/C/7/Add.11 stated that persons who believed that they were being detained unlawfully might address complaints to the relevant authorities "and also approach the communication media". She would be glad of an explanation of what was meant by that phrase. Did it imply that the detainee could appeal to the media from his prison cell?

51. Lastly, where article 15 was concerned, it would be helpful for the Committee to have the text of articles 127 and 134 of Ecuador's Code of Penal Procedure so that it could be certain that any statement made as a result of torture or ill-treatment in cases of any kind, including cases involving drugs, would not be considered valid in a court of law.

52. Mr. MIKHAILOV said he noted from paragraph 2 of document CAT/C/7/Add.13 that the 1851 Constitution had abolished the death penalty in Ecuador for

"purely political" offences. What was meant by that phrase? Did it imply that offences were categorized as political, non-political or a combination of the two? Were there any offences which were still liable to the death penalty?

53. With reference to paragraph 12, he would appreciate more details as to the "limitations established in the Constitution and the law" on the rights of foreigners. Were more severe penalties ever imposed than the maximum penalty of 16 years' imprisonment referred to in paragraph 16, for instance, for an accumulation of offences? He was not clear about the distinction made in paragraph 19 between two categories of offence, one of which would incur a further two years' imprisonment, and would welcome clarification of that point. Similarly, he wished to know how the compensation for unjust conviction referred to in paragraph 48 was awarded in practice. Lastly, it was stated on page 14 that, under article 78 (n) of the Constitution, the President of the Republic could assume certain powers in cases of "serious internal disturbance or catastrophe". He would like to know what implications that provision would have where legislation prohibiting acts of torture was concerned.

54. Mr. DIPANDA MOUELLE said he would appreciate some information on how the judiciary in Ecuador was organized and, in particular, on how magistrates were appointed. He would also like to know whether there were specific regulations governing the treatment of offenders in penal establishments: for example, were juveniles kept separate from adult offenders and were persons in detention kept separate from persons who had been convicted? Did any high-security prisons exist in Ecuador?

55. Mr. KHITRIN said he had understood from the oral introduction by the representative of Ecuador that persons accused of criminal offences were not eligible for legal aid, which would mean that those who could not afford to pay for the services of counsel would be effectively without any defence when they appeared in court. He would appreciate clarification on that issue. The Committee had received a large number of communications from non-governmental organizations regarding the use of torture in Ecuador. Had the Government also received such communications and, if so, what action was it taking in connection with them?

56. The CHAIRMAN joined other speakers in welcoming the additional report and additional information (CAT/C/7/Add.11 and 13), which helped to remedy some of the inadequacies of the initial report (CAT/C/7/Add.7) submitted to the Committee. However, he would appreciate clarification of certain points. Article 4 of the Convention required each State party to ensure that all acts of torture were made offences under its criminal law, but paragraph 17 of document CAT/C/7/Add.13 did not make the nature of the acts punishable under the Penal Code sufficiently clear. It was therefore important that Ecuadorian legislation should be amended to ensure that it fully covered torture as defined under article 1 of the Convention, especially psychological torture.

57. The document was to be commended for its frankness in giving details in paragraph 50 of a number of actual cases of torture that had occurred. Although it was to be inferred that such practices were still fairly widespread, the investigations carried out did not seem to have resulted in prosecutions and no one had as yet been convicted. That was a very serious

failing: it was not enough simply to state that inquiries were in progress. In particular, had any members of the Criminal Investigation Service been prosecuted before that Service had been disbanded or were any of them currently facing charges?

58. With regard to paragraph 52, he agreed with Ms. Chanet and Mr. Burns that economic difficulties or poverty could never justify the use of extreme procedures and certainly not the use of torture. As had been pointed out by Ms. Chanet, article 3 of the Convention prohibited not only extradition, but also expulsion and refoulement, where there were grounds for believing that the person concerned was in danger of being subjected to torture. He was not sure where that article was given effect in Ecuadorian legislation, unless it could be assumed to be automatically applicable.

59. In the section of the document dealing with the application of article 5, reference was made to offences for which special legal provisions or international conventions dictated that Ecuadorian law would prevail. He would be glad of some clarification as to the meaning of that phrase. It would appear that the legislation of Ecuador did not fully comply with the requirements of article 6 of the Convention that States parties in whose territory an offence had been committed should take the suspect into custody to enable criminal or extradition proceedings to be instituted. With regard to article 9 of the Convention, the document stated that contracting States to the Bustamante Code "may agree upon or accept" certain forms of communication in respect of criminal matters; however, the Convention made it clear that States parties were, in fact, obliged to afford one another such assistance.

60. From the number of cases of torture reported, it would seem that the measures taken to implement article 10 of the Convention were insufficient. It would be advisable to increase the number of training and education programmes; in particular, assistance could be sought from the Centre for Human Rights. Where article 11 was concerned, no mention was made of any provision for regular visits by independent magistrates to persons held in custody. Lastly, with regard to article 14, he would like to know whether there had been any actual cases where compensation had been awarded to victims of torture.

61. While the Committee appreciated the information provided in the additional report, it looked forward to receiving further clarifications, since it appeared that there were serious grounds for concern that torture in Ecuador continued to exist and had even been practised on a systematic basis. It was essential that the Government should continue its efforts to combat that scourge: investigations seemed to be proceeding somewhat slowly and, as yet, no sentences had been handed down. The penalties imposed should be severe and compensation should be provided for victims. He hoped that the next report submitted by Ecuador would show evidence of positive improvements. The Committee would certainly do everything it could to assist in that regard.

The meeting rose at 12.55 p.m.